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6

7 **BEFORE THE**
8 **RESPIRATORY CARE BOARD**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1H 2008 592

12 DAVID DAGUM, R.C.P.

A C C U S A T I O N

13 172 South Serrano Avenue
Los Angeles, California 90004

14 Respiratory Care Practitioner License No. 26173,
15 Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer of the Respiratory Care Board of California (the
20 Board).
- 21 2. On or about April 20, 2007, the Board issued Respiratory Care Practitioner
22 License Number 26173 to David Dagum, R.C.P. (Respondent). That license was in full force
23 and effect at all times relevant to the charges brought herein and will expire on August 31, 2010,
24 unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the
27 following laws.
- 28 4. Section 3710 of the Business and Professions Code states: "The

1 Respiratory Care Board of California, hereafter referred to as the board, shall enforce and
2 administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

3 5. Section 3718 of the Business and Professions Code states: “The board
4 shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this
5 chapter.”

6 6. Section 3750.5 of the Business and Professions Code states, in pertinent
7 part:

8 “In addition to any other grounds specified in this chapter, the board may
9 deny, suspend, or revoke the license of any applicant or license holder who has
10 done any of the following:

11 “(a) Obtained or possessed in violation of law, or except as directed by a
12 licensed physician and surgeon, dentist, or podiatrist administered to himself or
13 herself, or furnished or administered to another, any controlled substances as
14 defined in Division 10 (commencing with Section 11000) of the Health and Safety
15 Code, or any dangerous drug as defined in Article 2 (commencing with section
16 4015) of Chapter 9 of this code.”

17 7. Section 492 of the Business and Professions Code states:

18 “Notwithstanding any other provision of law, successful completion of any
19 diversion program under the Penal Code, or successful completion of an alcohol
20 and drug problem assessment program under Article 5 (commencing with section
21 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
22 any agency established under Division 2 ([Healing Arts] commencing with
23 Section 500) of this code, or any initiative act referred to in that division, from
24 taking disciplinary action against a licensee or from denying a license for
25 professional misconduct, notwithstanding that evidence of that misconduct may
26 be recorded in a record pertaining to an arrest.

27 “ This section shall not be construed to apply to any drug diversion
28 program operated by any agency established under Division 2 (commencing with

1 Section 500) of this code, or any initiative act referred to in that division.”

2 8. Health and Safety code section 11007 states, “Controlled Substances,”
3 unless otherwise specified, means a drug, substance, or immediate precursor which is listed in
4 any schedule in Section 11054, 11055, 11056, 11057 or 11058.”

5 9. Health and Safety code section 11054 states, in pertinent part, (a) “The
6 controlled substances listed in this section are included in Schedule I.”

7 (b) . . .

8 (c) . . .

9 (d) . . . (13) marijuana.

10 ”

11 10. Health and Safety code section 11357(b) states:

12 “Except as authorized by law, every person who possesses not more than 28.5
13 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor
14 and shall be punished by a fine of not more than one hundred dollars (\$100).
15 Notwithstanding other provisions of law, if such person has been previously
16 convicted three or more times of an offense described in this subdivision during
17 the two-year period immediately preceding the date of commission of the
18 violation to be charged, the previous convictions shall also be charged in the
19 accusatory pleading and, if found to be true by the jury upon a jury trial or by the
20 court upon a court trial or if admitted by the person, the provisions of Sections
21 1000.1 and 1000.2 of the Penal Code shall be applicable to him, and the court
22 shall divert and refer him for education, treatment, or rehabilitation, without a
23 court hearing or determination or the concurrence of the district attorney, to an
24 appropriate community program which will accept him. If the person is so
25 diverted and referred he shall not be subject to the fine specified in this
26 subdivision. If no community program will accept him, the person shall be
27 subject to the fine specified in this subdivision. In any case in which a person is
28 arrested for a violation of this subdivision and does not demand to be taken before

1 a magistrate, such person shall be released by the arresting officer upon
2 presentation of satisfactory evidence of identity and giving his written promise to
3 appear in court, as provided in Section 853.6 of the Penal Code, and shall not be
4 subjected to booking.”

5 COST RECOVERY

6 11. Section 3753.5, subdivision (a) of the Business and Professions Code
7 states:

8 “In any order issued in resolution of a disciplinary proceeding before the
9 board, the board or the administrative law judge may direct any practitioner or
10 applicant found to have committed a violation or violations of law to pay to the
11 board a sum not to exceed the costs of the investigation and prosecution of the
12 case. A certified copy of the actual costs, or a good faith estimate of costs where
13 actual costs are not available, signed by the official custodian of the record or his
14 or her designated representative shall be prima facie evidence of the actual costs
15 of the investigation and prosecution of the case.”

16 12. Section 3753.7 of the Business and Professions Code states:
17 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
18 attorney general or other prosecuting attorney fees, expert witness fees, and other
19 administrative, filing, and service fees.”

20 13. Section 3753.1 of the Business and Professions Code states:
21 “An administrative disciplinary decision imposing terms of probation may include,
22 among other things, a requirement that the licensee-probationer pay the monetary costs
23 associated with monitoring the probation and further provides that the board shall not
24 renew or reinstate a license whose holder has failed to pay all of the costs order under this
25 section once a licensee has served his or her term of probation.”

26 CAUSE FOR DISCIPLINE

27 (Unlawful Possession of a Controlled Substance)

28 14. Respondent is subject to disciplinary action under section 3750.5(a) in that

1 Respondent did unlawfully possess a controlled substance, to wit, marijuana. The facts and
2 circumstances are as follows:

3 A. On or about June 27, 2008, Respondent was at Lower Scholl Canyon Park
4 in Glendale, California, with a group displaying "Air Soft Guns." The park ranger
5 advised the group that it was a violation of the Glendale Municipal Code to display such
6 items in public. Several of the guns had the orange tips painted over in black, giving
7 them the appearance of real firearms.

8 B. The ranger collected the guns, several of which were hidden on the park
9 playground equipment. They resembled handguns, a shotgun and M-16 rifle models.
10 The ranger asked the group if there were any guns, knives, alcohol or drugs in their
11 vehicles, to which they stated, "No."

12 C. Due to the fact that some of the air soft guns were altered to appear
13 realistic, the ranger asked if he could search their vehicles for any further contraband.
14 The Respondent identified a parked white Acura as his car and gave the ranger consent to
15 search his vehicle.

16 D. In searching the vehicle, the Ranger discovered "Zig-Zag" cigarette rolling
17 papers in the driver's side door map pocket. Based on his training and experience, the
18 ranger knew that cigarette rolling papers are commonly used to smoke marijuana. He
19 asked Respondent again if there were any drugs in the car to which he stated, "Yes. The
20 Respondent directed a fellow park ranger to an area below the vehicle's steering wheel
21 where the ranger recovered two plastic containers containing marijuana. The Respondent
22 informed the rangers that he was the only occupant of his car when he came to the park.
23 He was advised of his rights, and stated that he had purchased the marijuana from an
24 unknown male in Los Angeles for \$50. Respondent was cited and released with a Notice
25 to Appear.

26 E. On or about July 14, 2008, a misdemeanor criminal complaint, case
27 number 8GN02768, was filed against Respondent charging him with possession of
28 marijuana under one ounce in violation of Health and Safety Code section 11357(b).

1 F. On or about July 28, 2008, Respondent plead not guilty to the charges and
2 was ordered to complete a drug diversion program.

3 G. On or about September 12, 2008, the court ordered the case dismissed in
4 furtherance of justice pursuant to Penal Code section 1385, as the Respondent provided
5 proof of completion of the drug diversion program to the court.

6 **PRAYER**

7 **WHEREFORE**, Complainant requests that a hearing be held on the matters
8 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

9 1. Revoking or suspending Respiratory Care Practitioner License Number
10 26173, issued to David Dagum, R.C.P.

11 2. Ordering him to pay the Respiratory Care Board the costs of the
12 investigation and enforcement of this case, and if placed on probation, the costs of probation
13 monitoring;

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: March 11, 2009

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18 Original signed by Colleen Whitestine for:
19 STEPHANIE NUNEZ
20 Executive Officer
21 Respiratory Care Board of California
22 Department of Consumer Affairs
23 State of California
24 Complainant

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